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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH: HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.1777 OF 2006

PETITIONER		**SHYAMLAL PADE** Aged about 60 years, S/o Late Derha Ram Pade, R/o Ganjpara, Durg, Tah. & Distt. DURG (C.G.)
	Vs.	
RESPONDENTS	1.	**STATE OF CHHATTISGARH** Through – Principal Secretary, Mining Department, Govt. of Chhattisgarh, Secretariat D.K.S. Bhawan, **RAIPUR (C.G.)**
	2.	**THE COLLECTOR** (Mining Branch) Through – Mining Officer, Collectorate, DURG (C.G.)
	3.	**DIRECTOR** Mines and Minerals Chhattisgarh, Raipur, Tahsil & Distt. Raipur (C.G.)

Present: Mr. V.G. Tamaskar, learned counsel for the petitioner.
Mr. Sanjay S. Agrawal, learned Govt. Advocate for the State.

ORAL ORDER
(Passed on 13th April, 2006)

The petitioner being aggrieved by the order of the Director, Mines and Minerals Chhattisgarh, Raipur, the third respondent herein, refusing to stay the order of the Collector (Mining Branch), Collectorate, Durg, the second respondent herein, by which he had cancelled the soil excavation lease granted in favour of the petitioner for a period of one year commencing from 12/11/2005 to 11/11/2006, has filed this writ petition. The second respondent after issuing show cause notice dated 22/02/2006 and considering the reply submitted by the petitioner by his order dated 18/03/2006 cancelled the soil excavation lease. The petitioner being aggrieved by the above order of the second respondent, preferred an

appeal to the third respondent which is pending before him for adjudication. Along with the appeal, the petitioner made an application for grant of an interim order to stay the order of the second respondent dated 18/03/2006, and that application has been rejected by the third respondent vide his order dated 28/03/2006.

(2) It was contended by the learned counsel for the petitioner that the soil excavation lease has been cancelled by the second respondent on the ground that he excavated the soil from the adjoining Government land under the garb of soil excavation lease granted in his favour and that that allegation is factually incorrect and such an adverse finding is recorded against the petitioner on the basis of the report submitted by the joint inspection team.

(3) The question whether the allegation made against the petitioner is true or false is essentially a question of fact. Such a disputed question cannot be resolved in a summary proceeding under Article 226 of the Constitution. Be that as it may, the appeal preferred by the petitioner is pending before the third respondent for adjudication, and it is open for the petitioner to urge the above ground before him for its consideration and it is open for the third respondent to record finding on the said contentious issue, if need be, by conducting spot inspection by himself. Since the second respondent has already cancelled the soil excavation lease earlier granted in favour of the petitioner, unless that order is found to be untenable on factual or legal ground, at this stage, it is not proper for this Court to step in under Article 226 of the Constitution and interfere with the discretionary order made by the third respondent on 28/03/2006 refusing to grant the interim order. In that view of the matter, I dismiss the

writ petition. However, the second respondent is directed to dispose of the appeal of the petitioner expeditiously, at any rate, within a period of one month from the date of receipt of a copy of this order.

Sd/-
Chief Justice

Brajesh.